**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 3166 OF 1995**

Pune Contonment Board .... Petitioner

versus

S.B. Panse
The Presiding officer and others .... Respondent.

Mr. K.J.Presswalla i/b Mulla & Mulla CBC for the petitioner
Shri S.M.Dharap for Respondents 2,4 to 16
None for Respondent no.1 though served.

**CORAM; A.P. DESHPANDE, J.**
**DATED; 30TH MARCH, 2007**

**JUDGMENT;**

1. This petition is filed by the Pune Cantonment Board, taking an exception to the order passed by the Central Government Labour Court No.2 dated 26th July 1994, allowing an application moved by the present Respondent nos. 2 to 17 under section 33-C(2) of the Industrial Disputes Act. The respondent nos. 2 to 17 herein are employees of the petitioner and they are allotted residential accommodation. As the petitioner had allotted residential accommodation to the respondents, the petitioner declined to grant them house rent allowance mainly relying on the terms of the settlement entered into between the Cantonment Board and All India Association of Union dated 13th

May 1969 which has been made operational retrospectively with effect from 1-12-1967. Respondents 2 to 17 relying upon certain orders passed in similar facts situation, prior in point of time by the Labour Court and High Court, had filed an application under section 33-C (2) claiming house rent allowance.

2. The application was vehemently opposed by the present petitioner by filing elaborate written statement. In the written statement, it was contended that some of the employees were inadvertently paid house rent allowance after the year 1969 though a settlement has arrived at and the said inadvertent payment to the employees does not vest the present respondent nos. 2 to 17 with any legal right to claim House rent allowance. It was emphatically pleaded in the written statement that on account of the settlement being reached on 13-5-1969 by the Cantonment Board, which regulates the payment of allowances and which does not provide for payment of house rent allowance to the respondents, the respondents are not entitled to it. Reliance was specifically placed on clause 14 of the settlement with a view to demonstrate that there is no existing right in the present respondents to claim the house rent allowance. It was also the case of the

petitioner before the labour court that in the absence of an existing right to recover the house rent allowance, an application under section 33-C(2) was not maintainable, and the labour court did not have the jurisdiction to decide the claim, made in the said application. The labour court has not adjudicated the contention raised by the petitioner to the effect that on account of execution of settlement between the parties the respondents are not entitled to House rent allowance and, the labour court has brushed aside the contention raised by the petitioner by observing that even after the settlement is arrived at, the same has not affected the rights of the employees,to receive House rent allowance. As a matter of fact the settlement vary the past practice in regard to payment of house rent allowance. Before proceeding further it would be necessary to refer the chequered history of the litigation briefly so as to understand the real controversy.

3. Sometime in the year 1958 various disputes were pending between the Cantonment Boards in India and their employees and the same were referred to the National Industrial Tribunal presided over by one Shri F. Jee jeebhoy being Reference No.NR-2 of 1958. One of the issue referred to therein was regarding the payment of house rent allowance. The tribunal by

passing the award popularly known as "Jeejeebhoy Award" which was published on 4th March 1960 in the Government of India Gazette, held thus: "There is no doubt that efforts are being made to provide free accommodation to the lowest paid Class IV employees who are mostly Harijans, and the steps which have been taken in that behalf have been seen by me at the Cantonments which I inspected, namely, Secunderabad, Poona, Aurangabad, Deolali, Meerut, Roorkee and Dehura Dun. In some Cantonment those of the Class IV staff who have not been provided with free quarters are given house rent allowance; and at present the same house rent allowance is given to the Cantonment employees which a neighbouring municipality gives to comparable categories. The claim to house rent allowance is thus not altogether opposed to present practice. I direct that Class III and IV employees in all the Cantonments who have not been provided with accommodation free or otherwise should be given the same house rent allowance as is being given by the State Government to corresponding categories of employees." 4. Placing reliance on the said award, some of the class III employees of the petitioner had filed an application under section 33-C(2) of the Industrial Dispute Act before the Central Government Labour Court at Bombay making a demand in relation to the dues of house rent allowance

for the period commencing from 1st March 1960 to 30th September 1964. The application was opposed by the petitioner by contending that as the petitioner had provided residential accommodation to the employees, they were not entitled to the house rent allowance. The said applicants in the said application were Shivram B. Jadhav and others. The application was rejected by the labour court and aggrieved thereby a Special Civil Application bearing No. 2306/70 was filed in this court. High Court decided the application in favour of the employees. This court interpreted the award to mean that even if the employees are provided housing facility by the petitioner, then also the employees were entitled to house rent allowance. It is relevant to note that the claim which was granted by the High Court was in relation to the period prior to the settlement.

5. After the settlement of 1969 when the employees were not paid the house rent allowance, some of the employees viz. R.K.Salvi and 64 others moved the Central Government Labour Court by filing an application bearing No. LC-2/6 in the year 1974. By then a Special Leave Petition was filed by the petitioner in the Supreme Court calling in question the legality of the judgment and order passed by the High Court dated 18-1-1974. The labour court allowed

the application moved by the said employees mainly for the reason that some of the employees were being paid the house rent allowance even after the award had lapsed and came to be substituted by the settlement. The order passed by the labour court was maintained in further proceedings.

6. Lastly a group of employees filed applications bearing Nos. 325, 326, 327 and 328 of 1984 under section 33-C(2) and claimed house rent allowance. The said applications were allowed and the dispute had landed in this court. The learned Single Judge of this court declined to interfere with the order passed by the labour court as some of the employees of the petitioner were granted house rent allowance.

7. The order passed by the learned Single Judge, Justice Gadgil, dt 17th August 1985 observes that the specific plea, raised by the petitioner before the labour court that the terms of settlement of the year 1969 does not permit the employees to claim house rent allowance, was not adjudicated. As the court noticed that despite a settlement being arrived at in the year 1969 between the Cantonment board and the Association of Unions, it has paid house rent allowance to some of its employees and hence allowed the order passed by the labour court to hold the field by declining to

interfere with the same. An SLP was carried by the petitioner against the said order bearing Civil Appeal No. 2795/86. The Supreme Court has elaborately dealt with various orders passed in the litigation between the parties and after noting the plea raised by the petitioner that clause 14(iv) of the memorandum of settlement which had substituted the Jeejeebhoy award in regard to the payment of house rent allowance to class III and IV employees of the Cantonment Board, has left the question open for being adjudicated in an appropriate proceeding. The Supreme Court has declined to interfere with the order passed by the High Court by refusing to exercise its discretion under Article 136 of the Constitution of India. In the concluding paragraph the Supreme Court has observed thus:

> The question of law raised in these appeals by the Pune Cantonment Board remains open for decision in an appropriate case:

8. It is thus clear that though the petitioner has repeatedly raised the contention that the respondents (employees) have no right to receive house rent allowance after the settlement had come into force, the said issue has not been adjudicated so far and the last order passed by the Supreme Court leaves the

question open for adjudication. From the record it does appear that some of the employees of the petitioner were paid house rent allowance following the past practice even after the settlement. Some of the employees went on filing applications under section 33-C(2) and the same were allowed without touching the merit of the matter or to put it in otherwords as a matter of course, the applications were allowed by the labour court.

9. The jurisdiction of the labour court under section 33-C(2) is limited, and it is in the nature of execution proceedings. It can only be exercised if the employee has a right and is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money on the basis of earlier adjudication. The condition precedent for invoking jurisdiction under section 33-C(2) is that the claim of the workmen or entitlement of the workmen is already adjudicated upon and there is an existing right in the workmen to receive the same. A vexed question like the one which is raised by the petitioner and which touches the very entitlement of the employee to receive house rent allowance cannot be gone into and decide in summary proceedings under section 33-C(2). As stated hereinabove and as observed by the Supreme Court, the

question raised by the petitioner is as to whether after entering into the settlement in the year 1969, can the workmen claim the benefit under an earlier award which ceased to exist. The petitioners by filing the written statement has specifically contended before the labour court that the applicants are not entitled to claim the house rent allowance after the date from which the settlement has come into force. The said contention was brushed aside by the labour court by simply observing that even after the settlement, the right accrued under the award are intact. The issue requires serious consideration and the same cannot be gone into in a summary proceeding under section 33-C(2). The said issue can only be decided in substantive proceedings by raising a dispute.

10. The learned counsel for the petitioner has placed reliance on a judgment of the Supreme Court in **Central Inland Water Transport Corporation Ltd. Vs. The Workmen and another reported in AIR 1974 S.C. 1604** and to be precise on para 12 of the said judgment the Supreme Court wherein held thus:

> "It is now well settled that a proceeding under section 33-C (2) is a proceeding generally in the nature of an execution

proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged or otherwise duly provided for. in Chief Mining Engineer East India Coal Co.Ltd. Vs. Rameshwar, (1968) 1 SCR 140 = (AIR 1968 SC 218) it was reiterated that proceedings under section 33-C(2) are analogous to execution proceedings and the Labour court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workman and his employer".

11. The question raised in the present proceedings clearly reveals that the issue has to be decided by

the Industrial Tribunal in substantive proceedings and cannot be dealt with under section 33-C(2).

12. The learned counsel for the respondent has tried to urge that as the labour court has not dealt with and adjudicated the petitioner's contention that the employees are not entitled to house rent allowance after the coming in force of the settlement in the year 1969, the matter be remanded back with a direction to the labour court to decide the issue.

13. As I have already observed, that the question involved in this petition is not capable of being resolved by the labour court in exercise of jurisdiction under section 33-C(2), no useful purpose would be served by remanding the matter back to the labour court. As the condition precedent for exercise of jurisdiction under section 33-C(2), viz. an existing right previously adjudged, is absent in the present case, the labour court will have no jurisdiction to decide the issue. The labour court has committed a jurisdictional error in entertaining the application under section 33-C(2) and granting the relief claimed therein. The entitlement or existing right previously adjudged cannot be held to be in existence just because some of the employees are paid the house rent allowance inadvertently or by mistake.

Wrong payment to some of the employees does not vest the remaining employees with a right which could be termed as an adjdged right or entitlement as is contemplated by section 33-C(2) of the Act.

14. The learned counsel for the respondent then submits, touching the question in regard to the entitlement of the employees to the house rent allowance,that as the petitioner has paid the amount of house rent allowance to some of its employees even after execution of the settlement, the same tantamount to waiver of the right of the petitioner under the settlement and therefore the terms of jeejjebhoy award would operate. It is also the submission of the learned counsel for the respondent that the issue in regard to entitlement of house rent allowance is an incidental issue, the main issue being waiver of the right of the petitioner. Even assuming for the sake of argument that these are the issues which emerge for adjudication, the same cannot be decided by the labour court under section 33-C(2). Hence request for remand made by the learned counsel for respondent cannot be granted.

15. The learned counsel for the petitioner objects to the said contentions being raised in this writ petition by pointing out that touching the issue of

waiver absolutely no evidence whatsoever has been led by the parties before the trial court. I have no hesitation to conclude that the question of waiver cannot be adjudicated in this petition.

16. In view of the above, the present writ petition deserves to be allowed and I proceed to allow the same. The impugned order passed by the Central Government labour court no.2 in Application No. LC-2/79 of 1992 dated 26th July 1994 is quashed and set aside.

17. The petitioner is permitted to withdraw the money which it had deposited in this court under the interim orders passed by the court together with the accrued interest, if any.

18. Rule made absolute in the above terms with no order as to costs.

...